

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PATRICIA ANN GIULIANO, ) CASE NO. C09-0100-CRD  
Plaintiff, )  
v. ) ORDER AFFIRMING  
MICHAEL J. ASTRUE, ) COMMISSIONER  
Commissioner of Social Security, )  
Defendant. )

The Court has reviewed the entire record, including the Administrative Record, the memoranda of the parties, the Report and Recommendation of United States Magistrate Judge Mary Alice Theiler, Plaintiff's opposition to the Report and Recommendation, and Defendant's response. For the foregoing reasons, the Court adopts the Report and Recommendation in its entirety and affirms the Commissioner's decision.

In her opposition to the Report and Recommendation, Plaintiff contends that both the ALJ and the Magistrate Judge applied an incorrect legal standard at step two of the disability analysis. Plaintiff argues that if the correct standard were applied at step two, her depression and anxiety would be found legally severe impairments. Specifically, Plaintiff points to the ALJ's analysis regarding the medical expert, who believed Plaintiff had moderate social

01 limitations. The ALJ disagreed with the medical expert, finding:

02 Specifically, according to the state's evaluation, the [plaintiff's] symptoms were  
03 not serious enough to rise to the degree of limitation required to find a severe  
04 impairment. Accordingly, I have not found a basis for the moderate social  
05 limitations assessed by the medical expert. The treatment records have not  
06 indicated that the [plaintiff's] mental impairments have created a moderately  
severe limitation in maintaining social functioning. More significantly, the  
[plaintiff] has managed in the past to work with her impairments and has  
functioned relatively well, which would not warrant a moderate limitation in her  
social functioning.

07 AR 31.

08 In support of the above portion of the ALJ's decision, Magistrate Judge Theiler notes,  
09 "A diagnosis alone is not sufficient to establish a severe impairment. Instead, a claimant must  
10 show that her medically determinable impairments are severe. 20 C.F.R. § 404.1520(c). In  
11 this case, Plaintiff has not demonstrated the existence of a mental impairment significantly  
12 limiting her ability to perform basic work activities." Report and Recommendation at 7.

13 Plaintiff argues the ALJ, and consequently the Report and Recommendation, apply an  
14 incorrect legal standard by requiring more than a "moderately severe limitation in maintaining  
15 social functioning" when the correct threshold at step two is lower. Plaintiff argues that  
16 "Respectfully, there is no requirement that there be more than 'moderate limitations' in order  
17 for a finding of legal severity; the standard is more than a 'minimal effect' on claimant's ability  
18 to work..." Plaintiff's Objections at 2-3. Plaintiff also correctly sets forth the applicable  
19 legal standard, however, the Court finds neither the ALJ nor the Magistrate Judge applied the  
20 "incorrect" legal standard as Plaintiff presents it.

21 The ALJ analyzed the medical expert's opinion that Plaintiff has a "moderately severe  
22 social limitation," however, the ALJ did not use "moderate severity" as the legal standard at

01 step two. Instead, the ALJ discussed why he disagreed with the medical expert's opinion of a  
02 "moderately severe limitation in maintaining social functioning" concluding that Plaintiff does  
03 not have a severe impairment at step two of the disability analysis. Thus, the ALJ did not hold  
04 "moderate severity" out as the disability standard at step two, but applied the correct legal  
05 standard, which, as noted by Magistrate Judge Theiler, requires that:

06 At step two, plaintiff must make a threshold showing that her medically  
07 determinable impairments significantly limit her ability to perform basic work  
activities. *See Bowen v. Yuckert*, 482 U.S. 137, 145 (1987) and 20 C.F.R. §§  
08 404.1520(c), 416.920(c). "Basic work activities" refers to "the abilities and  
aptitudes necessary to do most jobs." 20 C.F.R. §§ 404.1521(b), 416.921(b).  
09 "An impairment or combination of impairments can be found 'not severe' only  
if the evidence establishes a slight abnormality that has 'no more than a minimal  
effect on an individual's ability to work.'" *Smolen v. Chater*, 80 F.3d 1273, 1290  
10 (9th Cir. 1996) (quoting Social Security Ruling (SSR) 85-28). "[T]he step two  
inquiry is a *de minimis* screening device to dispose of groundless claims." (Id.)  
11 (*citing Bowen*, 482 U.S. at 153-54).

12 Report and Recommendation at 4.

13 Accordingly, the Court finds the Report and Recommendation does not apply an  
14 erroneous legal standard, and is not otherwise in error by recommending affirmance of the  
15 ALJ's decision at step two of the disability analysis.

16 Plaintiff also asserts that Magistrate Judge Theiler "improperly deferred to the ALJ's  
17 determination regarding Ms. Giuliano's credibility." Plaintiff's Objections at 2. However, as  
18 Defendant correctly notes, "Beyond this bare assertion, Plaintiff has not supported this claim  
19 with any argument." Defendant's Response at 5.

20 It is therefore ORDERED:

21 (1) The Court adopts the Report and Recommendation;  
22 (2) The Court AFFIRMS the decision of the Commissioner; and

(3) The Clerk shall direct copies of this Order to all counsel and to Judge Theiler.

DATED this 20<sup>th</sup> day of October, 2009.

Carolyn R. Hinckley

Carolyn R. Dimmick  
United States District Judge